

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)**

Present:

Ms. Justice Naima Haider
And
Ms. Justice Kazi Zinat Hoque

Writ Petition No. 10901 of 2022

In the matter of :

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

-And-

In the matter of :

Sumaia Khatun

..... Petitioner

-VERSUS-

Land Survey Tribunal (Joint District Judge), Jessore
and others

.....Respondents

Mr. Md. Aktarujjaman, Advocate

..... For the petitioner

Mr. Mohammed Mutaher Hossain, with

Mr. Md. Habibur Rahman Sarker, Advocates

.... For the respondent Nos. 7-9 &11-17

Date of Hearing : 25.01.2024

Date of Judgment: 28.01.2024

Kazi Zinat Hoque, J :

In this application under Article 102 of the Constitution a Rule Nisi has been issued calling upon the respondents to show cause as to why the impugned judgment and decree dated 25.02.2021 (decree signed on 02.03.2021) passed by the Judge (Joint District Judge) of the Land Survey Tribunal, Jessore (respondent No.2) in Land Survey Tribunal Suit No.1655 of

2018 decreed the suit ex-parte (Annexures – C and C-1) should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

The petitioner filed this Land Survey Tribunal Suit No. 1655 of 2018 before the Land Survey Tribunal, Jessore. Vide judgment and decree dated 25.02.2021 (decree signed on 02.03.2021) the Land Survey Tribunal, Jessore decreed the suit ex-parte. The petitioner filed this writ petition challenging the judgment and decree of the Land Survey Tribunal, Jessore.

Mr. Md. Aktarujjaman, learned Advocate, represented the petitioner. Mr. Mohammed Mutaher Hossain with Mr. Md. Habibur Rahman, learned Advocates, appeared on behalf of the respondents and submitted that since Land Survey Appellate Tribunal has already been formed, this writ petition is not maintainable.

The State Acquisition and Tenancy Act was enacted in 1950. Sections 145A, 145B, 145C, 145D, 145E, 145F, 145G, 145H and 145I were inserted in the State Acquisition and Tenancy Act 1950 vide Act No. IX of 2004. Section 145A provides that Land Survey Tribunal shall hear and dispose of suits arising out of the final publication of the last revised

record of rights prepared under section 144. Section 145B provides that Land Survey Appellate Tribunal shall hear appeals arising out of judgment and decree of the Land Survey Tribunal.

Section 145B is reproduced below:

“(1) The Government may, by notification in the official Gazette, establish as many Land Survey Appellate Tribunals as may be required to hear the appeals arising out of the judgment, decree or order of the Land Survey Tribunals.

(2) The Government may, by notification in the official Gazette, fix and alter the territorial limits of the jurisdiction of any Land Survey Appellate Tribunal.

(3) The Government shall appoint the judge of the Land Survey Appellate Tribunal from among the persons who are or have been Judges of the High Court Division.

(4) No appeal other than the appeals arising out of the judgment, decree or order of the Land Survey Tribunal shall lie in the Land Survey Appellate Tribunal.

(5) Subject to the provision of sub-section (6), any person aggrieved by any judgment, decree or order of the Land Survey Tribunal may, within three months from the

date of such judgment, decree or order, prefer an appeal to the Land Survey Appellate Tribunal.

(6) An appeal may be admitted within next three months even after the expiry of the period specified in sub-section (5), if the Land Survey Appellate Tribunal is satisfied with the reasons for delay shown by the appellant.”

The said section 145B was amended vide Act No. 24 of 2023. The new amended section 145B is reproduced below:

“(1) The Government may, by notification in the official Gazette, establish as many Land Survey Appellate Tribunals as may be required to hear the appeals arising out of the judgment, decree or order of the Land Survey Tribunals.

(2) The Government may, by notification in the official Gazette, fix and alter the territorial limits of the jurisdiction of any Land Survey Appellate Tribunal.

(3) The Government shall appoint the judge of the Land Survey Appellate Tribunal from among the persons who are District Judges.

(3A) Until such judge is appointed under sub-section (3), the Government may empower the District

Judge as the judge of the Land Survey Appellate Tribunal of the district.

(3B) The District Judge, empowered under sub-section (3A), shall be deemed to be the judge of the Land Survey Appellate Tribunal appointed under sub-section (3).

(3C) The Government may, if necessary, appoint one or more Additional District Judges as a judge of the Land Survey Appellate Tribunal to hear appeals transferred by the judge of the Land Survey Appellate Tribunal appointed or empowered under this section.

(4) No appeal other than the appeals arising out of the judgment, decree or order of the Land Survey Tribunal shall lie in the Land Survey Appellate Tribunal.

(5) Subject to the provision of sub-section (6), any person aggrieved by any judgment, decree or order of the Land Survey Tribunal may, within three months from the date of such judgment, decree or order, prefer an appeal to the Land Survey Appellate Tribunal.

(6) An appeal may be admitted within next three months even after the expiry of the period specified in sub-section (5), if the Land Survey Appellate Tribunal is

satisfied with the reasons for delay shown by the appellant.”

Since Land Survey Appellate Tribunal has already been formed this writ petition is not maintainable. However, for ends of justice the petitioner should be given an opportunity to prefer appeal before the concerned Land Survey Appellate Tribunal.

In the result, the Rule is disposed of. The petitioner shall be at liberty to prefer appeal, if so advised, before the concerned Land Survey Appellate Tribunal within a period of 03 (three) months from the date of receipt of a copy of this judgment. The order of stay and status-quo, with regard to the nature and character of the suit property, shall continue till filling of such appeal.

There is no order as to cost.

Communicate a copy of this judgment to the concerned Land Survey Tribunal at once.

(Kazi Zinat Hoque, J):

I agree

(Naima Haider, J):